

CITY OF DAYTONA BEACH MINUTES

SPECIAL MAGISTRATE HEARING

February 12, 2013 at 9:00 AM
City Commission Chambers
301 South Ridgewood Avenue,
Daytona Beach, Florida

ATTENDEES:

Mr. David Vukelja, Special Magistrate

STAFF:

Anthony E. Jackson, Assistant City Attorney
Hector Garcia, Code Compliance Manager
Officer Sheri Siracusa
Mr. Tom Clig, Code Inspector
Mr. Daniel Garcia, Code Inspector
Ms. Vicki Lankford, Code Inspector
Mr. David Newell, Fire Inspector
Mr. John Stenson, Code Inspector
Ms. Colleen Miles, Zoning Officer
Ms. Aimee Hampton, Board Secretary

Approval of Minutes by: _____

Special Magistrate

Mr. Vukelja called the Hearing to order at 9:05 a.m.

Mr. Vukelja approved the January 8, 2013 Meeting Minutes.

Mr. Vukelja asked if there were any announcements.

Ms. Hampton advised the following cases that were in compliance.

CASE NO 6 SMG 01-13-04 – Gregory F. Brown is cited for failure to correct violations of the Land Development Code, Art. 8 Sec. 2.7; Art. 18 Sec. 7.3; Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.8, 304.15 and 605.1), at **716 Berkshire Road** - Violation(s) – Parking in the yard; outside storage; junk vehicle; exterior doors; electrical fixtures - First Notified – 10/26/2012.

Compliance February 8, 2013.

Ms. Hampton swore in members of staff that would be testifying.

CASE NO 1 SMG 12-12-79 – Terra Green III, LLC is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.3), at **N Beach Street - Vacant Lot Short Parcel # 5337-17-00-0201** - Violation(s) – Multiple pot holes - First Notified – 5/2/2012.

Respondent was in compliance January 9, 2013.

CASE NO 2 SMG 01-13-01 – Kenneth & Emma G. Southall is cited for failure to correct violations of the Land Development Code, Art. 17 Sec. 2.189, at **920 Kathy Street** – Violation(s) – **Inoperable trailer parked in street** – First Notified – 11/13/2012.

Respondent was in compliance February 5, 2013.

CASE NO 3 SMG 11-12-70 – Cathy E. Smith is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.10, 304.6, 304.13), at **510 Arthur Avenue** Violation(s) – **Dilapidated stairs; exterior surfaces; windows** - First Notified – 9/10/2012.

Ms. Cathy Smith came forward and was sworn.

Mr. Stenson testified on behalf of the City and presented the case history, violations and exhibits. Mr. Stenson stated the permit was under review and the last notation was that corrections were needed to the plans that were submitted.

Ms. Smith stated she hired a contractor who initially charged her \$150.00 and then when changes were needed the contractor Ray McCloud was now asking for \$350.00. Ms. Smith stated Mr. McCloud stated he needed hurricane straps on the stairs and two nails on the bottom of the steps but said she needed \$350.00 dollars for him to do it.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondent to come into compliance by March 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day until compliance is achieved.

CASE NO 4 SMG 12-12-82 – Gemy A. Hana & Hany Nassif, JTRS is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.6), at **108 Boysenberry Lane** - Violation(s) – Exterior surfaces (stucco) - First Notified – 8/31/2012.

Mr. Stenson testified on behalf of the City and presented the case history, violations and exhibits. Mr. Stenson stated the violations are for stucco in disrepair. Mr. Stenson stated the property owner is in litigation with the builder.

Mr. Nassif came forward and was sworn. Mr. Nassif stated yesterday the lawyer, consultant for the lawyer and a representative of KB Homes inspected the house and took pictures. Mr. Nassif said the Attorney for KB notified his lawyer last night they were going to take care of the stucco. Mr. Nassif stated they were supposed to be sending paperwork to his lawyer about what they were going to do and when. Mr. Nassif stated either KB was going to pay him to have it fixed or they were going to fix it themselves.

Mr. Stenson stated the actual work itself should take approximately 30 days.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondents until March 6, 2013 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 5 SMG 12-12-83 – Thomas Kotora is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 302.1, 302.4, 302.5, 302.7, 303.1, 303.2, 303.3, 303.4, 303.5, 303.6, 303.7, 303.10, 303.13, 303.13.2, 303.14, 303.15, 304.1, 304.2, 304.3, 304.5, 305.1, 306.1, 501.2, 504.1, 504.2, 504.3, 505.1, 505.4, 506.1, 601.2, 602.1, 602.2, 602.3, 603.1, 604.2, 604.3, 605.1, 605.2, 605.3, 704.1, 704.2, at **1323 Hillcrest Drive** - Violation(s) – Sanitation; weeds; rodent harborage; accessory structures; protective treatment; premises identification; exterior structural members; foundation walls; exterior walls; roofs and drainage; stairways, decks, porches, and balconies;

window, skylight and door frames; openable windows; insect screens; doors; interior structural members; interior surfaces; interior doors; accumulation of rubbish and garbage; infestation; Plumbing system general; plumbing fixture clearances; plumbing system hazards; General water system; water heating facilities; general sanitary drainage system; Mechanical and electrical requirements - responsibility; Heating facilities required; heating for residential occupancy; heat supply; mechanical appliances; electrical facilities service; electrical system hazards; electrical installation; electrical receptacles; lighting fixtures; Fire protection systems - smoke detectors, installation - First Notified – 9/24/2012.

Respondent was not present.

Mr. Stenson testified on behalf of the City and presented the case history, violations and exhibits. Mr. Stenson stated Community Development has taken over the rehabilitation of this property and are working towards having the property demolished. Mr. Stenson presented an email from Mary Williams, the City's Community Development outlining the compliance time. Mr. Stenson asked for a compliance date for the May cut-off to allow enough time for the structure to be demolished.

Ruling

Mr. Vukelja amended the previous order of non-compliance to allow the Respondents until May 8, 2013 to come into compliance or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 7 SMG 02-13-08 – Johnnie Moore is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 307.1); City Code 90-297(a), at **331 Bartley Road** - Violation(s) – Trash, junk, debris and yard waste on the premises; No occupational license for rental - First Notified – 1/9/2013.

Mr. Lopez testified on behalf of the City and presented the case history, violations and exhibits. Mr. Lopez stated he spoke to the property owner who removed some debris towards the rear of the property but the front of the property still has debris. Mr. Lopez requested a compliance date for the next cut-off.

Respondent was not present.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by March 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day plus a one-time administrative fine of \$250.00.

CASE NO 8 SMG 02-13-09 – Rafica Muhammad Itani is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.13.1, 304.15, 304.7), at **602 El Dorado Street** - Violation(s) – Damaged entry door and window; roof, soffit and fascia damage - First Notified – 11/28/2012.

Mr. Robert Muhammad came forward and was sworn. Mr. Muhammad stated he was appearing on behalf of his mother. Mr. Muhammad stipulated to the violations.

Mr. Lopez testified on behalf of the City and stated the door and window have been repaired, the only remaining violations was for the roof. Mr. Lopez stated the Respondent needed to pull a permit and requested a compliance date for the next cut-off.

Mr. Muhammad stated he believed he could be in compliance by the next cut-off date.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by March 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

CASE NO 9 SMG 02-13-10 – Joyce Dixon Revocable Trust dtd 9/15/06 is cited for failure to correct violations of the Land Development Code, Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.10, 304.12, 304.15, 304.3, 307.1, 604.3, 605.1); City Code 90-297(a), at **308 Marion Street** - Violation(s) – Rotten wood on stairways, rail decks and garage door; no electrical power; exterior door assembly damage; no premises identification numbers; no occupational license for rental - First Notified – 12/18/2012.

Respondent was not present.

Mr. Lopez testified on behalf of the City and stated the has been in contact with the property owner who has made some improvements but there are still some minor issues that need to be taken care of. Mr. Lopez requested the next cut-off for compliance.

Ruling

Mr. Vukelja found the Respondent in non-compliance and ordered the Respondent come into compliance by March 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day plus one-time administrative fine of \$250.00.

CASE NO 10 SMG 02-13-11 – Bakare Organization, LLC and LoanBuySale, Inc. d/b/a LBS Tax Services is cited for failure to correct violations of the Land Development Code, Art. 18 Sec.6.6(a); Art. 19 Sec.1.1 (Ref. FBC Supp IPMC 304.6), at **986 Orange Avenue** - Violation(s) – Signs posted on city right of way, illegal amount of window sign covering window; exterior walls shall be free from holes, breaks and loose or rotting materials - First Notified – 1/24/2013.

Respondent was not present.

Mr. Lopez testified on behalf of the City and who advised the tenant as well as the owner has been cited. Mr. Lopez stated the off-site signs have been distributed all over the City and the City has picked up 683 off site signs. Mr. Lopez stated a permit was needed for signs on the windows as the office and there is stucco damaged. Mr. Lopez requested a fine of \$100 for each violation and an administrative fee of \$985.00 for the costs associated with removal of the signs. Mr. Lopez further stated the City was requesting a permit be pulled for the signage on the window and the repair of the damaged stucco by the next cut-off date.

Mr. Lopez stated four to five inspectors have been picking up signs throughout the City and that they have spoken with the business owner who continues to place the signs out.

Mr. Jackson stated that case law has recognized these types of violations found as irreparable and irreversible in nature and the City Code allows a maximum fine up to \$15,000.00.

Mr. Vukelja inquired as to the fine amount the City was requesting.

Mr. Jackson stated after discussing with administration and that 683 signs have been collected and a reasonable amount would be \$10.00 per sign would be \$6,830.00 with an administrative fee of \$985.00 which included in office work and the time picking up and processing the signs thereby correcting the violation.

Mr. Jackson advised everyone who is required to receive notice has been noticed of the proceedings. Mr. Jacksons stated pursuant to §162.09 if a violation is determined to be irreparable administrative costs associated with repair can be imposed.

Ruling

Mr. Vukelja found the Respondent in non-compliance. Mr. Vukelja found the off-site signs irreparable and irreversible in nature. Mr. Vukelja ordered a fine be imposed in the amount of \$6,830.00 as well as administrative fine of \$985.00 be imposed. Mr. Vukelja further ordered a will fine imposed for the off-site sign violations and that any future repeat violation be returned to a subsequent meeting for consideration of a fine up to \$5,000 per occurrence.

Mr. Vukelja further found the Respondents in non-compliance with regard to the window signs and exterior wall damage and ordered the Respondents come into compliance by March 6, 2013 or be returned to a subsequent meeting for consideration of a fine up to \$1,000 per day.

Mr. Jackson advised that as soon as a signed order is received, the Inspector will hand deliver the orders to the Respondents.

CASE NO 11 SMG 02-13-12 – Deep Lounge, Inc. and Another Plan B, Inc., d/b/a 509 Lounge is cited for failure to correct violations of the Land Development Code, Art. 1 Sec.5.3; Art. 17 Sec. 2.13(b); Art. 18 Sec. 6.6; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.5 and 308.1); City Code 42-211(b), at **509 Seabreeze Blvd.** - Violation(s) – Non-conforming use as a bar instead of a restaurant; Alcoholic beverages primarily being served; illegal signage; rodent harborage; infestation; amplified noise violation First Notified – 1/25/2013 (hand written).

Respondent was not present.

Mr. Vukelja announced he received correspondence from Attorney David Hood, counsel for the Respondent who advised that since he was an attorney and member of the state legislature, statute provides automatic passes on everything. Mr. Vukelja inquired of the City if they had any comments or objection to the issue.

Mr. Jackson stated he researched the statute and found the only issue where it would be deemed unconstitutional as applied when it is addressing an issue deemed to be an emergency or irreversible or irreparable type of circumstances. Mr. Jackson stated the city is not declaring that is the circumstance as of now and therefore the City would accept the statute as applied, however should that situation change they would make the magistrate aware. Mr. Jackson requested progress reports to be able to monitor and re-visit the situation.

Ruling

Mr. Vukelja continued the case to March 12, 2013 for a progress report.

CASE NO 12 SMG 02-13-13 – Abraham Kamaly and Two Six Five, LLC d/b/a Bishop's Tavern is cited for failure to correct violations of the Land Development Code, Art. 1 Sec.5.3; Art. 17 Sec. 2.13(b); Art. 18 Sec. 6.6; Art. 19 Sec. 1.1 (Ref. FBC Supp IPMC 302.5 and 308.1); City Code 42-211(b), at **512 Seabreeze Blvd.** - Violation(s) – Non-conforming use as a bar instead of a restaurant; Alcoholic beverages primarily being served; illegal signage; rodent harborage; infestation; amplified noise violation - First Notified – 1/25/2013.

Respondent was not present however Attorney Brett Hartley filed a motion for continuance.

Mr. Jackson stated he spoke with Mr. Hartley and City Staff and there was no objection to a continuance at this time.

Ruling

Mr. Vukelja continued the case to March 12, 2013 for compliance or non-compliance.

Miscellaneous Business

1. Mr. Jackson stated at the City Commission's request, next month he will begin presenting cases.

Adjournment: The meeting was adjourned at 9:48 a.m.